

(2012) 02 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 9337 of 2011

Jaswant Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-02-2012

Acts Referred:

Haryana Co-operative Societies Act, 1984 — Section 102, 103, 114
Land Acquisition Act, 1894 — Section 5A

Citation : (2012) 02 P&H CK 0031

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Sandeep Lather for Mr. Parul Malik, for the Appellant; Kirti Singh, DAG, Haryana for Respondent Nos. 1 to 3, Ms. Anita Balyan for Mr. Deepal Balyan, Advocates for Respondent No. 4 and Mr. S.S. Dalai, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—The dispute in the present case relates to elections of the Managing committee/Board of Directors of The Shahabad Cooperative Sugar Mills Limited, Shahabad, District Kurukshetra - the fourth respondent. The result of the Zone 3 was declared on 22.11.2009. The petitioner was declared elected. The fifth respondent - Janak Singh stood defeated along with another contestant namely Jai Pal Singh. The date of filing nominations was fixed on 03.11.2009 in the notified election programme. Scrutiny of nomination papers was held on 04.11.2009 and as stated earlier the election was held on 22.11.2009. The 5th respondent - Janak Singh aggrieved by the election of the petitioner filed the election petition u/s 102/103 of the Haryana Cooperative Societies Act, 1984 challenging the election of the petitioner Jaswant Singh. The Registrar Cooperative Societies, Panchkula (for short "the RCS") accepted the petition vide order dated 19.08.2010 (P-4) and Set aside the election of the petitioner. The reason for acceptance of the petition was that. Jaswant Singh was a defaulter member at the time of filing of papers. Reliance was placed on a default

certificate dated 03.11.2009 which is not disputed inasmuch as the petitioner has cleared his default on 14.11.2009 before the elections were held. However, the RC found that there was no document to prove that the petitioner was not defaulter on the date of filing; of the nomination papers or on the date of scrutiny of the nomination.

2. Aggrieved by the order of the RCS, the petitioner preferred an appeal u/s 114 of the Act for setting aside the order dated 19.08.2010 passed by the RCS in election petition/cooperative 197/2009 before the Financial Commissioner and Principal Secretary to Government of Haryana Cooperation Department, Chandigarh. The Appellate Authority also came to the conclusion that the petitioner was a defaulter on the date when nomination papers were filed on 03.11.2009 and a subsequent deposit of default amount on 14.11.2009 but before the election would not come to his rescue in the face of Rule 27 of the Haryana Co-operative Societies Rules, 1989. Rule 27 deals with disqualification for membership of Committee. Rule 27(a) is reproduced below :-

27(a) he is in default to any Cooperative Society in respect of any sum due from him to the society or owes to any Cooperative Society an amount exceeding his maximum credit limit;

3. In the result, the appeal was dismissed.

4. This Court issued notice to the respondents and separate replies have been filed on behalf of the State of Haryana and by the fifth respondent Janak Singh.

5. I have heard the learned counsel for the parties at some length.

6. The petitioner admits that on the day, of filing of the nomination papers, he was a defaulter but he had made good the default on 14.11.2009. On the strength of this clearance of default, learned counsel for the petitioner submits that both the Courts below have erred in not accepting his argument that since he was not in default on the date of election, the election should be rescinded. Learned counsel for the petitioner relies upon a Division bench decision of this Court in CWP No. 14673 of 2007 titled as Nishi Gupta and another v. State of Haryana and another decided on 08.07.2008 to contend that there was no objection filed as to his candidature or default status. In Nishi Gupta case the court dealt with the issue of objections u/s 5-A of the Land Acquisition Act, 1894 and if no objections are filed it would indicate acquiescence to acquisition of land. This case is clearly distinguishable of facts and law and would have no parallel application to the provisions of Rule 27 of the Cooperative Rules.

7. Mr. S.S. Dalai, learned counsel appearing for respondent No. 5 has pointed out from the written statement filed by his client that at the time of scrutiny, his client has raised an objection along with a default certificate issued by the Bihta Primary Agriculture Cooperative Society Ltd. showing the petitioner in default. Despite this specific objection raised by the fifth respondent, the same was ignored by the returning officer and the election symbol was allotted to they

petitioner in an arbitrary manner. In these circumstances, the election was held though the petitioner remained successful. Mr. Dalai submits that under Rule 27(a) of the Rules a disqualification runs even if the default is in relation not only to the cooperative society where elections are being held but also "to any Co-operative Society". Consequently, the petitioner being a defaulter of another Cooperative Society that itself disqualified him for election, and his election was rightly nullified. Mr. Dalai relies upon a Division Bench decision of this Court in Rameshwar Singh Vs. The Financial Commissioner and Secretary to Govt. of Haryana Cooperation Department and Others, . He would rely on Para 9 thereof in which this Court held that "the Legislature has purposely introduced the words in sub-rule (a) of Rule of the Rules "to any Co-operative Society". As we have held above that on the relevant date, i.e. on 5.5.1993 the petitioner was a defaulter, therefore he was rightly held to be not eligible to contest the election of the Director and to that extent the orders Annexures P3 and P4 are perfectly valid and legal". The date 5.5.1993 in that case was the date of filing nominations.

8. Mr. Parul Malik, learned counsel appearing for the petitioner disputed the assertion of the fifth respondent and stated that no objection was taken by the private respondent against the nomination of the petitioner and, therefore, there was no occasion for the returning officer to examine the same on the date of scrutiny.

9. I am afraid, it is not possible to agree with the submission in the absence of any rebuttal. No replication was filed in this case. In any case, non-filing of objection would not debar presentation of an election petition and a decision on merits. The issue of disqualification was within the jurisdiction of the Election Tribunal to opine on.

10. Ms. Kirti Singh, Deputy Advocate General, Haryana appearing for the respondent-State submits that there was non-disclosure of vital fact by the petitioner of being, a defaulter of the Bihta Primary Agriculture Cooperative Society Ltd. at the time of Wing of nomination paper. The petitioner can have no advantage of his own wrong and withholding of information in the nomination form itself should non suit him since the form requires a candidate to disclose if he is a defaulter qua any society. In the face of certificates dated 03.11.2009 and 14.11.2009 it is beyond cavil that the inference drawn by both the Courts below of the petitioner being disqualified was fair and proper.

11. I would agree with Mr. Dalai and with learned State counsel that the relevant date for considering eligibility would be the date when nomination papers are filed. Clearance of default cannot be postponed to a future date.

12. I do not find any infirmity in the orders passed by the RCS, Haryana and the appellate order justifying interference in exercise of writ jurisdiction. The conclusions arrived at by both the Courts are unexceptionable. On the date of filing of nomination papers, the petitioner was in admitted default and, therefore,

disqualified from contesting the elections. He could blame rune but himself. As a result of the above discussion, I find no merit in this petition and would dismiss the same. Writ petition to stand dismissed. No costs.